

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ASA FARMS, INC., a California corporation and
BRAGA RANCH,

Plaintiffs,

v.

FRESH 'N HEALTHY, INC. A Delaware
corporation, et al.,

Defendant.

Case Number C08-00122 JF

ORDER¹ GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION

[re: docket no. 2]

ASA Farms, Inc. and Braga Ranch ("Plaintiffs") allege that Fresh 'N Healthy, Inc. ("Fresh") owes them \$302,756.84 for produce purchased in a series of transactions between November 9, 2007 and December 28, 2007. Plaintiffs seek a preliminary injunction enjoining Fresh, its agents, officers, directors, shareholders, subsidiaries, assigns and all persons in active concert or participation with them who receive actual notice of this Order from dissipating the assets of a Perishable Agricultural Commodities Act ("PACA") statutory trust. 7 U.S.C. § 499e(c)(5) invests courts with the authority to provide injunctive relief to prevent dissipation of a

¹ This disposition is not designated for publication and may not be cited.

1 PACA trust. Although it has not filed opposition to the motion, Fresh did raise certain objections
2 to Plaintiffs' proposed order. Notwithstanding these objections, Fresh consents to entry of a
3 preliminary injunction.

4 IV. ORDER

5 Good cause therefor appearing, IT IS HEREBY ORDERED that:

- 6 1. Defendant Fresh, its agents, officers, directors, subsidiaries, assigns and banking
7 institutions² and all persons in active concert or participation with them who
8 receive actual notice of this Order, are enjoined and restrained from dissipating,
9 paying, transferring, assigning or selling any and all assets covered by or subject
10 to the trust provisions of the PACA without agreement of the parties or until
11 further order of this Court. Under § 499e(c)(2) of PACA, the assets subject to this
12 Order include all assets of Fresh, unless Fresh can prove that a particular asset is
13 not derived from perishable agricultural commodities, inventories of food or other
14 products derived from perishable agricultural commodities or receivables or
15 proceeds from the sale of such commodities or products. *See In re Kornblum &*
16 *Co.*, 81 F.3d 280 (2d Cir. 1996) (holding that the burden is on the defendant to
17 demonstrate that dissipated assets were not purchased with PACA trust assets).
 - 18 2. This Order shall be binding upon the parties to this action, their officers, agents,
19 employees, banking institutions or attorneys and all other persons or entities who
20 receive actual notice of this Order by personal service or otherwise.
 - 21 3. Plaintiffs shall not be required to post a bond.
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24 ² Without citing any authority, Fresh argues that this Court cannot enjoin banking
25 institutions because Fresh has no control over its banking institutions and those institutions are
26 not parties to this case. However, where a PACA debtor deposits PACA assets into a bank
27 account, courts may enjoin the bank from distributing those funds. *Cont'l Fruit Co. v. Gatziolis*
28 *& Co.*, 774 F. Supp. 499 (N.D. Ill. 1991). Defendants bear the burden of proving that a particular
asset is not a PACA asset. Fresh has not made any argument that the assets controlled by any
particular banking institutions are not PACA assets.

1 DATED: January 29, 2008.

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JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

2 Kelly McCarthy Sutherland kelly@lomgil.com

3 James Washburn Sullivan jim@lomgil.com

4 Kenneth Gorman ken@lomgil.com

5 Robert Anthony Franklin rfranklin@murraylaw.com